

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CHARLES L. EKSTAM, et al.,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:04CV00187 AGF
)	
C. BRAD EKSTAM, et al.,)	
)	
Defendant.)	

ORDER ON MOTION TO COMPEL

This matter is before the Court on the Plaintiffs' Motion to Compel Inspection of Defendants' Products [Doc. #118], filed on January 29, 2007. In its motion, Plaintiffs seek to compel Defendants to produce for inspection certain of Defendants' products, listed on Ex. Q¹ to the motion [Doc. #119-18]. Although the parties have attempted to agree to the terms of a stipulation that would obviate the need for such an inspection, they were able to agree to language only with respect to certain of the products, namely certain fuel air filtering systems, referenced as "FASS Clones." Defendants object to the inspection, asserting that the request is overbroad, and requesting that Plaintiffs stipulate that the items other than the FASS Clones "have substantially non-infringing uses and are regularly bought by consumers for uses other than removing air from fuel and would not infringe even if the FASS Systems do infringe." See Doc. #120.2. As the Court

¹ The precise products requested for inspection are marked in brackets on Exhibit A to Exhibit Q (Doc. #119-18, pgs. 2-8).

understands Plaintiffs' current motion, it is not directed to the spare parts or other items not identified as FASS Clones.

Upon review of the parties' memoranda and supporting exhibits,² the Court finds no basis for requiring the stipulation that Defendants seek with regard to the products other than the FASS Clones, especially where, as here, Plaintiffs have had no opportunity to inspect the products. Indeed, that inspection is what Plaintiffs were seeking.

Accordingly,

IT IS HEREBY ORDERED that Plaintiffs' Motion to Compel Inspection of Defendants' Products [Doc. #118] is **GRANTED**. Within ten (10) calendar days of the date of this Order, Defendants shall produce for inspection, at the offices of Simon Passanante, PC, in St. Louis,³ the products marked for inspection on Ex. P to Plaintiffs' Motion [Doc. #119-17]. In the alternative, Defendants may execute the Proposed Joint Stipulation marked as Ex. Q to Plaintiffs' motion.



AUDREY G. FLEISSIG
UNITED STATES MAGISTRATE JUDGE

Dated this 27th day of February, 2007.

² It appears that the wrong document was originally filed as Exhibit 4 to Defendants' Response [Doc. #120-4], but Defendants have now filed the correct exhibit [Doc. #122-2], which has been reviewed by the Court.

³ Although Defendants objected to the production requested, overall, in their opposition papers they did not specifically object to the place of the production or offer to produce all such products at an alternative location.